

**IN THE UNITED STATES  
PATENT AND TRADEMARK OFFICE**

Appl. No. : 10/829,091  
Applicants : John EIDSON et al.  
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Examiner : JACOBS, Lashonda T.  
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Title: DIFFUSING CONFIGURATION DATA TO DISTRIBUTED  
DEVICES

**APPEAL BRIEF**

Mail Stop **Appeal Brief**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the FINAL Office Action dated 27 August 2009 and the Advisory Action dated 15 December 2009, finally rejecting pending claims 1-8, 10-16, 18-21, and 24-27, and in support of the Notice of Appeal filed on 22 December 2009, Applicants hereby respectfully submit this Appeal Brief.

**REAL PARTY IN INTEREST**

According to an assignment recorded at Reel 014834, Frame 0235, Agilent Technologies owns all of the rights in the above-identified U.S. patent application.

**RELATED APPEALS AND INTERFERENCES**

There are no other appeals or interferences related to this application or to any related application, nor will the disposition of this case affect, or be affected by, any other application directly or indirectly.

### **STATUS OF CLAIMS**

Claims 1-8, 10-16, 18-21, and 24-27 are pending.

Claims 1-8, 10-16, 18-21, and 24-27 all stand rejected.

Accordingly, the claims on Appeal are claims 1-8, 10-16, 18-21, and 24-27.

### **STATUS OF AMENDMENTS**

There are no pending amendments with respect to this application.

### **SUMMARY OF CLAIMED SUBJECT MATTER**

The present invention is directed to a method and system of measuring network performance using real network traffic.<sup>1</sup>

Accordingly, as broadly recited in claim 10, a method for configuring a set of distributed devices (FIG. 1 – elements 210-224; page 5, lines 3-5; FIG. 2 – devices A, B & C; page 6, lines 15-17) comprises the steps of: providing to one or more of the distributed devices, via communication subsystems (FIGs. 4A-B – element 54; page 14, line 2) of the one or more distributed devices, a set of configuration data (FIG. 2 – Config. Data; page 6, lines 13-15; page 1, lines 11-16) that configures the one or more distributed devices for performing a measurement/control function (FIGs. 4A-B – element 56; page 14, lines 3-6) (page 7, lines 9-11); and diffusing the provided configuration data among the distributed devices (page 7, lines 19-23).

As further featured in claim 11, the step of providing includes the step of obtaining the configuration data from an application server (page 6, lines 21-22).

As further featured in claim 15, the step of diffusing includes: forming a first communication channel (FIG. 2 – element 22; page 7, line 20) between a first one of the distributed devices (FIG. 2 – e.g., device A; page 6, lines 13-19) and a kiosk (FIG. 2 – element 16; page 7, lines 19-23); communicating the configuration data

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<sup>1</sup> In the description to follow, citations to various reference numerals, figures, and corresponding text in the specification are provided solely to comply with Patent Office rules. It should be understood that these reference numerals, figures, and text are exemplary in nature, and not in any way limiting of the true scope of the claims. It would therefore be improper to import anything into any of the claims simply on the basis of **exemplary** language that is provided here only under the obligation to satisfy Patent Office rules for maintaining an Appeal.

from the first distributed device and the kiosk via the first communication channel (page 7, lines 19-23); forming a second communication channel between a second one of the distributed devices (FIG. 2 – e.g., Device B; page 6, lines 13-19) and the kiosk; and communicating the configuration data from the kiosk to the second distributed devices (page 7, lines 23-27).

As further featured in claim 16, the step of forming the first communication channel includes the step of forming the first communication channel with the kiosk in response to a physical proximity between the first communication device and the kiosk (page 12, lines 24-17; page 14, lines 14-16).

As further featured in claim 25, the step of diffusing includes the step of determining a relative staleness of different sets of configuration data (page 8, lines 4-10).

As broadly recited in claim 18, a first device (FIG. 4A – element 50, page 13, lines 32-33; FIG. 2 – Device A; page 6, lines 13-19) comprises: a measurement/control subsystem (FIG. 4A-B – element 56; page 14, lines 3-6); means (FIG. 4A – elements 52 & 54; page 14, line 2 and page 14, line 11 – page 15, line 2) for obtaining from a remotely-located configuration data source (FIG. 2 – Application Server 10; page 6, lines 21-25) a set of configuration data (FIG. 2 – Config. Data; page 6, lines 13-15; page 1, lines 11-16) that configures a second device (FIG. 2 – Device B; page 6, lines 13-19; page 7, lines 19-27), spaced apart from the first device, for performing a measurement/control function (page 1, lines 11-16); and means (FIG. 4A – elements 52 & 54; page 14, line 2 and page 14, line 11 – page 15, line 2) for diffusing the configuration data from the first device to the second device.

As further featured in claim 21, the means for diffusing includes means (FIG. 4 – element 54; page 14, lines 2 and 11-20) for forming a communication channel (FIG. 2 – element 22; page 7, line 20) between the first device and a kiosk (FIG. 2 – Kiosk 16; page 7, lines 19-23).

As further featured in claim 26, the means for diffusing includes means (FIG. 4A – element 52; page 14, lines 2 and 22-29; page 8, lines 4-10) for determining a staleness of the configuration data.

As broadly recited in claim 24, a measurement/control system (FIGs. 1 & 2 – element 310; page 5, line 3; page 6, lines 13-15) comprises: a configuration data source (FIG. 2 – Application Server 10; page 6, lines 21-25) that provides a set of configuration data that specifies a measurement/control function; and a set of distributed devices (FIG. 1 – elements 210-224; page 5, lines 3-5; FIG. 2 – devices A, B & C; page 6, lines 15-17) each having means (FIG. 4A – elements 52 & 54; page 14, line 2 and page 14, line 11 – page 15, line 2) for obtaining the configuration data (FIG. 2 – Config. Data; page 6, lines 13-15; page 1, lines 11-16) from the configuration data source and means (FIG. 4A – elements 52 & 54; page 14, line 2 and page 14, line 11 – page 15, line 2) for diffusing the configuration data among the distributed devices.

As further featured in claim 1, the means for diffusing includes means (FIG. 4A – element 52; page 14, lines 2 and 22-29; page 8, lines 4-10) for determining a relative staleness of a set of configuration data stored in the distributed devices.

As further featured in claim 5, the means for forming a communication channel includes means (FIG. 4 – element 54; page 14, lines 2 and 11-20) for forming a communication channel in response to a physical proximity to the kiosk (page 12, lines 24-17; page 14, lines 14-16).

As further featured in claim 6, the means for diffusing includes means (FIG. 4 – element 54; page 14, lines 2 and 11-20) for forming a communication channel (FIG. 2 – element 22; page 7, line 20) with another of the distributed devices (FIG. 2 – Device B; page 6, lines 13-19; page 7, lines 19-27).

As further featured in claim 8, the means for diffusing includes means (FIG. 4A – elements 52 & 58; page 8, lines 4-10) for determining a relative staleness of a set of configuration data stored in a kiosk (FIG. 2 – Kiosk 16; page 7, lines 19-23) and a set of configuration data stored in the distributed devices.

#### **GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

The sole ground of rejection to be reviewed on Appeal is the rejection of claims 1-8, 10-16, 18-22 and 24-27 under 35 U.S.C. § 102 over McDonnell et al. U.S. Patent Application Publication 2001/0028313 (“McDonnell”).

## **ARGUMENTS**

### **I. Claims 1-8, 10-16, 18-22 & 24-27 Are Patentable**

#### **Under 35 U.S.C. § 102 over McDonnell**

Applicants respectfully traverse the rejections of claims 1-8, 10-16, 18-21, and 24-27 for at least the following reasons.

#### **Claim 10**

Among other things, the method of claim 10 includes providing to one or more distributed devices a set of configuration data that configures the one or more distributed devices for performing a measurement/control function; and diffusing the provided configuration data among the distributed devices.

Applicants respectfully submit that McDonnell does not disclose any method including this combination of features.

The Examiner states that paragraphs [0057]-[0058], [0062] and [0068] of McDonnell disclose these features.

Applicants previously indicated in the Amendment filed on 27 July 2009 that they believed that the cited text in paragraphs [0057]-[0058], [0062] and [0068] did not disclose these features.

In the “*Response to Arguments*” section of the FINAL Office Action, the Examiner now cites [0064]-[0067] and [0070] as disclosing these features, but makes no mention of the previously-cited paragraphs [0057]-[0058], [0062] and [0068].

As best as Applicants can understand the “*Response to Arguments*” section of the FINAL Office Action, it appears that the Examiner believes: that the cell phone 70 and the measurement unit 71 each correspond to one of the distributed devices of claim 10; that the data collected by measurement unit 71 (such as telemetry data) corresponds to the configuration data of claim 10; and that such “configuration data” is “diffused” when the measurement unit 71 transfers the telemetry data to the cell phone 70 (see FINAL Office Action at page 8, lines 2-6).

Applicants respectfully disagree.

At the outset, as plainly recited in claim 10, the configuration data “*configures the one or more distributed devices for performing a measurement/control function.*”

This is consistent with the teachings of the specification that configuration data “*may specify a geographic location, a time, and/or other parameters for performing a measurement and/or control function*” (page 1, lines 13-16). In contrast, Applicants respectfully submit that the data collected by measurement unit 71, such as telemetry data, does not “**configure one or more distributed devices** for performing a measurement/control function.”

Therefore Applicants respectfully submit that the data collected by measurement unit 71 does not correspond to the configuration data recited in claim 10.

Indeed, Applicants respectfully submit that McDonnell does not disclose any data which both: (1) configures a distributed device for performing a measurement/control function; and (2) is diffused among a set of distributed devices.

Therefore, Applicants respectfully submit that claim 10 is patentable over McDonnell. Accordingly, Applicants respectfully request that the rejection of claim 10 over McDonnell be withdrawn, and claim 10 be allowed.

Claims 11-16 and 25

Claims 11-16 and 25 depend from claim 10 and are deemed patentable for at least the reason set forth above with respect to claim 10, and for the following additional reasons.

Claim 11

Among other things, the method of claim 11 includes the step of obtaining the configuration data from an application server.

The Examiner states that this feature is disclosed by McDonnell in paragraph [0058].

Applicants respectfully disagree.

As noted above, the Examiner argues that the configuration data of claim 10 (and therefore the same configuration data in dependent claim 11) supposedly corresponds to the data (e.g., telemetry data) collected by measurement unit 71.

Applicants respectfully submit that nothing in paragraph [0058], or anywhere else in McDonnell, discloses that any application server provides such data (e.g., telemetry data) to measurement unit 71. Indeed, Applicants respectfully submit that

McDonnell does not disclose that any configuration data that both: (1) configures a distributed device for performing a measurement/control function; and (2) is diffused among a set of distributed devices, is also (3) obtained by a distributed device from an application server.

Therefore, for at least these additional reasons, Applicants respectfully submit that claim 11 is patentable over McDonnell. Accordingly, Applicants respectfully request that the rejection of claim 11 over McDonnell be withdrawn, and claim 11 be allowed.

#### Claim 15

Among other things, the method of claim 15 includes forming a first communication channel between a first one of the distributed devices and a kiosk; communicating the configuration data from the first distributed device and the kiosk via the first communication channel; forming a second communication channel between a second one of the distributed devices and the kiosk; and communicating the configuration data from the kiosk to the second distributed devices.

The Examiner states that these features are disclosed by McDonnell in paragraphs [0064]-[0066].

Applicants respectfully disagree. Applicants see no mention of any kiosk in paragraphs [0064]-[0066]. The Examiner does not identify anything in paragraphs [0064]-[0066] that supposedly corresponds to the recited kiosk, or the recited first and second communication channels for communicating configuration data.

Therefore, for at least these additional reasons, Applicants respectfully submit that claim 15 is patentable over McDonnell. Accordingly, Applicants respectfully request that the rejection of claim 15 over McDonnell be withdrawn, and claim 15 be allowed.

#### Claim 16

Applicants respectfully submit that McDonnell does not disclose in paragraphs [0068]-[0071] (or anywhere else) forming the first communication channel of claim 15 with a kiosk in response to a physical proximity between the first communication device and the kiosk.

Therefore, for at least these additional reasons, Applicants respectfully submit

that claim 16 is patentable over McDonnell. Accordingly, Applicants respectfully request that the rejection of claim 16 over McDonnell be withdrawn, and claim 16 be allowed.

#### Claim 25

Among other things, the method of claim 25 includes determining a relative staleness of different sets of configuration data.

The Examiner cites paragraphs [0079] and [0081] of McDonnell discussing the timestamping of readings taken by a mobile entity.

Applicants respectfully submit that readings taken by a mobile entity are not configuration data that “*configures the one or more distributed devices for performing a measurement/control function*” as recited in claim 10 from which claim 25 depends.

Paragraph [0079] discloses that measurement data received at Validation Unit 49 (not configuration data stored in distributed device 20) has a timestamp that can be used by Validation Unit 49 to determine if the measurement data is valid. Meanwhile, paragraph [0081] merely provides examples of different types of measurement data that may be collected and applications that may use that data. It does not disclose any means for determining a relative staleness of a set of configuration data stored in a distributed device.

Measurement data is not configuration data as recited in claims 10 and 25, at least because measurement data does not “*configure the one or more distributed devices for performing a measurement/control function*” as recited claims 10 and 25.

Therefore, for at least these additional reasons, Applicants respectfully submit that claim 25 is patentable over McDonnell. Accordingly, Applicants respectfully request that the rejection of claim 25 over McDonnell be withdrawn, and claim 25 be allowed.

#### Claim 24

Among other things, the measurement/control system of claim 24 includes a set of distributed devices each having means for obtaining configuration data from a configuration data source and means for diffusing the configuration data among the distributed devices.

The Examiner fails to identify anything in McDonnell that supposedly



corresponds to the recited configuration data source that provides configuration data that specifies a measurement/control function and which the devices include means for diffusing among the distributed devices. In that regard, Applicants note that telemetry data communicated between measurement device 71 and cell phone 70 is not obtained from a “configuration source” and also does not specify a measurement/control function.

Therefore, Applicants respectfully submit that claim 24 is patentable over McDonnell. Accordingly, Applicants respectfully request that the rejection of claim 24 over McDonnell be withdrawn, and claim 24 be allowed.

Claims 1-8

Claims 1-8 depend from claim 24 and are deemed patentable for at least the reasons as set forth above with respect to claim 24, and for the following additional reasons.

Claim 1

Among other things, in the system of claim 1, each distributed device includes means for determining a relative staleness of a set of configuration data stored in the distributed device.

For similar reasons to those set forth above with respect to claim 25, Applicants respectfully submit that McDonnell does not disclose any system including this combination of features.

Therefore, for at least these additional reasons, Applicants respectfully submit that claim 1 is patentable over McDonnell. Accordingly, Applicants respectfully request that the rejection of claim 1 over McDonnell be withdrawn, and claim 1 be allowed.

Claims 5 and 6

For similar reasons to those set forth above with respect to claims 15 and 16, Applicants respectfully submit that McDonnell does not disclose the features of claims 5 and 6.

Therefore, for at least these additional reasons, Applicants respectfully submit that claims 5 and 6 are patentable over McDonnell. Accordingly, Applicants respectfully request that the rejection of claims 5 and 6 over McDonnell be

withdrawn, and claims 5 and 6 be allowed.

Claim 8

Among other things, in the system of claim 1, in each distributed device the means for diffusing includes means for determining a relative staleness of a set of configuration data stored in a kiosk and a set of configuration data stored in the distributed devices.

Again, the Examiner fails to identify anything in McDonnell as supposedly corresponding to the kiosk. Applicants see no mention of any kiosk in paragraphs [0079] and [0081].

Therefore, for at least these additional reasons, Applicants respectfully submit that claim 8 is patentable over McDonnell. Accordingly, Applicants respectfully request that the rejection of claim 8 over McDonnell be withdrawn, and claim 8 be allowed.

Claim 18

Among other things, the device of claim 18 includes means for obtaining from a remotely-located configuration data source a set of configuration data that configures a second device, spaced apart from the first device, for performing a measurement/control function; and means for diffusing the configuration data from the first device to the second device.

For similar reasons to those set forth above with respect to claim 24, Applicants respectfully submit that McDonnell does not disclose any method including this combination of features.

Therefore, Applicants respectfully submit that claim 18 is patentable over McDonnell. Accordingly, Applicants respectfully request that the rejection of claim 18 over McDonnell be withdrawn, and claim 18 be allowed.

Claims 19-21 and 26-27

Claims 19-21 and 26-27 depend from claim 18 and are deemed patentable for at least the reason set forth above with respect to claim 18. Claim 21 is also deemed patentable for similar reasons to those set forth above with respect to claim 15, and claim 26 for similar reasons to those set forth above with respect to claim 25.

Therefore, for at least these additional reasons, Applicants respectfully submit

that claims 19-21 and 26-27 are patentable over McDonnell. Accordingly, Applicants respectfully request that the rejection of claims 19-21 and 26-27 over McDonnell be withdrawn, and claims 19-21 and 26-27 be allowed.

In Conclusion . . .

For all of the foregoing reasons, Applicants respectfully request that the rejections of claims 1-8, 10-16, 18-21, and 24-27 be withdrawn, the claims be allowed, and the application be passed to issue. If necessary, the Commissioner is hereby authorized in this reply to charge payment or credit any overpayment to Deposit Account No. 50-0238 for any additional fees required under 37 C.F.R. § 1.16, 37 C.F.R. § 1.17 or 37 C.F.R. § 41.20, particularly extension of time fees or any additional fee required for filing this Appeal Brief.

Respectfully submitted,

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Date: 22 February 2010

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### **CLAIMS APPENDIX**

1. (Previously Presented) The measurement/control system of claim 24, wherein the means for diffusing includes means for determining a relative staleness of a set of configuration data stored in the distributed devices.
2. (Original) The measurement/control system of claim 1, wherein the configuration data source includes a source kiosk that obtains the configuration data from an application server.
3. (Original) The measurement/control system of claim 1, wherein the configuration data source is co-located with a service provider accessible by one or more of the distributed devices.
4. (Original) The measurement/control system of claim 1, wherein the means for diffusing includes means for forming a communication channel with a kiosk.
5. (Original) The measurement/control system of claim 4, wherein the means for forming a communication channel includes means for forming a communication channel in response to a physical proximity to the kiosk.
6. (Original) The measurement/control system of claim 1, wherein the means for diffusing includes means for forming a communication channel with another of the distributed devices.
7. (Original) The measurement/control system of claim 6, wherein the means for forming a communication channel includes means for forming a communication channel in response to a physical proximity.
8. (Original) The measurement/control system of claim 1, wherein the means for diffusing includes means for determining a relative staleness of a set of

configuration data stored in a kiosk and a set of configuration data stored in the distributed devices.

10. (Previously Presented) A method for configuring a set of distributed devices, comprising the steps of:

providing to one or more of the distributed devices, via communication subsystems of the one or more distributed devices, a set of configuration data that configures the one or more distributed devices for performing a measurement/control function; and

diffusing the provided configuration data among the distributed devices.

11. (Original) The method of claim 10, wherein the step of providing includes the step of obtaining the configuration data from an application server.

12. (Original) The method of claim 10, wherein the step of providing includes the step of co-locating the configuration data with a service provider accessible by one or more of the distributed devices.

13. (Previously Presented) The method of claim 10, wherein the step of diffusing includes the step of forming a communication channel between a pair of the distributed devices and communicating the configuration data from one of the pair of distributed devices to the other of the pair of distributed devices.

14. (Previously Presented) The method of claim 13, wherein the step of forming a communication channel includes the step of forming a communication channel in response to a physical proximity of the pair of distributed devices to each other.

15. (Previously Presented) The method of claim 10, wherein the step of diffusing includes:

forming a first communication channel between a first one of the distributed

devices and a kiosk;

communicating the configuration data from the first distributed device and the kiosk via the first communication channel;

forming a second communication channel between a second one of the distributed devices and the kiosk; and

communicating the configuration data from the kiosk to the second distributed devices.

16. (Previously Presented) The method of claim 15, wherein the step of forming the first communication channel includes the step of forming the first communication channel with the kiosk in response to a physical proximity between the first communication device and the kiosk.

18. (Previously Presented) A first device, comprising:

a measurement/control subsystem;

means for obtaining from a remotely-located configuration data source a set of configuration data that configures a second device, spaced apart from the first device, for performing a measurement/control function; and

means for diffusing the configuration data from the first device to the second device.

19. (Previously Presented) The first device of claim 18, wherein the means for diffusing includes means for forming a communication channel to the second distributed device.

20. (Previously Presented) The first device of claim 19, wherein the means for forming a communication channel includes means for forming a communication channel in response to a physical proximity between the first device and the one or more other distributed devices.

21. (Previously Presented) The first device of claim 18, wherein the means for

diffusing includes means for forming a communication channel between the first device and a kiosk.

24. (Previously Presented) A measurement/control system, comprising:  
a configuration data source that provides a set of configuration data that specifies a measurement/control function; and  
a set of distributed devices each having means for obtaining the configuration data from the configuration data source and means for diffusing the configuration data among the distributed devices.

25. (Previously Presented) the method of claim 10, wherein the step of diffusing includes the step of determining a relative staleness of different sets of configuration data.

26. (Previously Presented) The device of claim 18, wherein the means for diffusing includes means for determining a staleness of the configuration data.

27. (Previously Presented) The device of claim 18, where the first device is a portable wireless device, and wherein the second device is a portable wireless device.

**EVIDENCE APPENDIX**

{None}



**RELATED PROCEEDINGS APPENDIX**

{None}